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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TURKIYE IHRACAT KREDI BANKASI,
A.S.,

Plaintiff,

vs.

NATURE'S BAKERY, LLC F/K/A BELLA
FOUR BAKERY, INC.,

Defendant.

NATURE'S BAKERY, LLC,

Third-Party Plaintiff,

vs.

INTRANSIA, LLC,

Case No. 3:20-cv-00330-LRH-CLB

**NATURE'S BAKERY'S APPLICATION
FOR FEES PURSUANT TO ECF NO. 104**

Third-Party
Defendants.

INTRANSIA, LLC,

Counterclaimant,

vs.

NATURE’S BAKERY, LLC F/K/A BELLA
FOUR BAKERY, INC.,

Counterdefendant.

Third-Party Plaintiff Nature’s Bakery LLC (“Nature’s Bakery”) respectfully submits this application pursuant to the Court’s October 29, 2021 Order (ECF No. 104) granting Nature’s Bakery attorney’s fees and costs associated with bringing its Motion for Sanctions and Reply.

This application is supported by the Declarations of David Kwasniewski and Justin J. Bustos identified as **Exhibits 1 and 2** and all exhibits thereto, and all papers and pleadings on file herein.

I. INTRODUCTION

As set forth in Nature’s Bakery’s Motion for Sanctions (ECF No. 81) and the Court’s Order granting that motion, Plaintiff, without justification, failed to appear for its duly noticed deposition on May 12, 2021. Nature’s Bakery repeatedly attempted to cooperate with Plaintiff regarding the scheduling of Plaintiff’s deposition beginning in April 2021, and even offered to hold Plaintiff’s deposition after the close of discovery in May 2021, all to no avail. Thereafter, Plaintiff moved for summary judgment (ECF No. 71) against Nature’s Bakery based largely on the self-serving declaration of one of Plaintiff’s employees whom Plaintiff’s prevented Nature’s Bakery from deposing.

As a direct result of Plaintiff’s discovery misconduct Nature’s Bakery was forced to expend significant attorney’s fees on numerous motions that would not have been necessary had Plaintiff’s produced its corporate representative for deposition as required under the Federal Rules.

- Nature's Bakery opposed Plaintiff's summary judgment motion (ECF No. 80) and moved for sanctions for Plaintiff's failure to make its witness available for deposition. (the "Motion for Sanctions", ECF No. 81.)
- Plaintiff then created even more of an uneven playing field by filing a 39-page "joint" brief (ECF No. 90) opposing Nature's Bakery's Motion for Sanctions and replying to Nature's Bakery's summary judgment opposition, which introduced extensive new arguments and evidence not previously addressed.
- This required Nature's Bakery to file a motion to strike (the "Motion to Strike") and a sur-reply to Plaintiff's submission (the "Sur-Reply") (ECF Nos. 97, 97-1) in addition to its Reply in support of its Motion for Sanctions (ECF No. 96).
- Plaintiff opposed the Motion to Strike, and Nature's Bakery filed a reply in support of its Motion to Strike as well (ECF No. 100.)

On October 29, 2021, the Court granted Nature's Bakery's Motion for Sanctions, noting that Plaintiff "failed to be cooperative, practical, or sensible" and its behavior "reflects a fundamental lack of compliance with the discovery process" which warranted sanctions "for the prejudice [Nature's Bakery] has suffered and to encourage Turk Eximbank to comply with its discovery obligations going forward." (Order at 11, 13). Because Plaintiff's discovery misconduct forced Nature's Bakery to engage in extensive motion practice which could otherwise have been avoided, Nature's Bakery should be compensated for all of the fees and costs it was forced to incur. *See Dang v. Cross*, 422 F.2d 800, 813 (9th Cir. 2005) (where fees awarded in connection with one successful claim, it was error for district court to not review fees incurred on other related claims). Accordingly, with this application Nature's Bakery seeks (1) all of the fees and costs it incurred in connection with its initial efforts to schedule Plaintiff's deposition; (2) all of the fees Nature's Bakery incurred to file the Motion for Sanctions; (3) 50% of the fees incurred in filing the Motion to Strike, which was also necessitated in part due to Plaintiff's discovery misconduct; and (4) 25% of the fees incurred in filing the Sur-Reply, which likewise was necessitated in part by Plaintiff's

discovery misconduct; and (5) all of the fees incurred by Nature's Bakery in preparing the instant fee application.

II. BRAUNHAGEY & BORDEN LLP'S HOURLY RATES ARE REASONABLE

BraunHagey & Borden LLP ("BHB") is a 30-lawyer boutique headquartered in San Francisco that routinely handles high profile, complex litigation involving antitrust, unfair competition, and other commercial matters. (Declaration of David Kwasniewski ("Kwasniewski Decl.") ¶ 2.) BHB regularly appears before federal and state courts throughout the country to prosecute and defend claims involving a variety of business issues. (*Id.*) BHB's clients run from Fortune 500 Companies to small businesses and encompass many different types of industries. (*Id.*) BHB has successfully litigated and arbitrated disputes exceeding many billions of dollars. (*Id.*)

BHB's hourly rates are reasonable. They are the actual rates paid by Nature's Bakery. (Kwasniewski Decl. ¶ 4.) They are the same as the rates paid by BHB's other clients. (*Id.*) BHB's hourly rates are far less than those charged by the big firms where counsel previously practiced and those charged by attorneys in the community of like experience, skill, and reputation. (*Id.* ¶ 6.) BHB's rates have been approved by the Ninth Circuit Court of Appeals in awarding sanctions under Federal Rule of Appellate Procedure 38. *See Walker v. B&G Foods, Inc., et al.*, Case No. 16-15349 (9th Cir., Jul. 20, 2017), Dkt. No. 26. (Kwasniewski Decl. ¶ 4.) BHB's rates have been approved by district courts in awarding discovery sanctions, *see Hill v. Robert's Am. Gourmet Food, Inc.*, No. C 13-80166 EDL (N.D. Cal.), Dkt. No. 17, and in awarding Rule 11 sanctions. *See Hunt v. Sunny Delight Beverages Co.*, 18-cv-00557-JLS-DFM (C.D. Cal.), Dkt. No. 69. (Kwasniewski Decl. ¶ 4.) They have also been approved in impact litigation before California State Courts. *See Davis v. AG Seal Beach, LLC, et al.*, Case No. BC468346 (Los Angeles Super. Ct.), and *State of Cal. ex rel. Todd Dominguez v. En Pointe Techs. Inc., et al.*, Case No. 37-2011-00100936-CU-BTL (San Diego Super. Ct.). (Kwasniewski Decl. ¶¶ 3-4.)

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1 **III. THE HOURS BHB EXPENDED ARE REASONABLE**

2 As set forth above, Nature's Bakery seeks to recover its fees and costs reasonably incurred
 3 in connection with (1) its initial efforts to schedule Plaintiff's deposition, (2) the Motion for
 4 Sanctions, (3) the Motion to Strike, and (4) the Sur-Reply, and (5) the instant fee application.
 5 Because the Motion to Strike and Sur-Reply were only partly necessitated by Plaintiff's discovery
 6 misconduct, Nature's Bakery seeks only 50% and 25%, respectively, of the fees incurred in
 7 connection with those filings.

8 **A. Fees Incurred to Schedule Plaintiff's Deposition**

9 Nature's Bakery seeks to recover for 1.6 efficient billable hours of attorney time and 2.9
 10 efficient billable hours of paralegal time in connection with its efforts to schedule Plaintiff's
 11 deposition in April and May of 2021. This consists of:

- 12 • **1.6** hours billed by David Kwasniewski in drafting correspondence with Plaintiff's
 13 counsel regarding deposition scheduling; and drafting and serving a notice of
 14 deposition;
- 15 • **2.9** hours billed by Cameron Baker, a BHB paralegal for coordinating for a court
 16 reporter for the deposition;

17 In total, Nature's Bakery incurred \$1,674.50 in fees in connection with its efforts to schedule
 18 Plaintiff's deposition. Nature's Bakery also incurred a cost of \$756.15 in connection with
 19 reserving a court reporter for May 12, 2021.

20 **B. Fees Incurred Related to the Motion for Sanctions**

21 Nature's Bakery seeks to recover for 73.8 efficient billable hours of attorney time and 2.3
 22 efficient billable hours of paralegal time in connection with its filing of the Motion for Sanctions.
 23 This consists of:

- 24 • **38.8** hours billed by David Kwasniewski in researching and drafting the motion and
 25 reply brief; preparing supporting declarations, and conferring with Nature's Bakery
 26 regarding the same;

- 31.8 hours billed by Andrea Hasegawa in researching and drafting the Motion for Sanctions;
- 3.3 hours billed by Andrew Levine for revising the motion and supporting declaration;
- 8.3 hours billed by Justin Bustos, Nature's Bakery's local counsel, for revising and supervising the filing of Nature's Bakery's Motion for Sanctions
- 2.3 hours billed by Cameron Baker, a BHB paralegal, for assisting in the filing of the motion for sanctions and reply briefs.
- 2.5 hours billed by Melinda K. Poehlman, a paralegal in local counsel's office, in connection with the motion for sanctions.

In total, Nature's Bakery incurred \$52,003.5 in fees in connection with its Motion to Sanctions.

C. Fees Incurred Related to the Motion to Strike

Nature's Bakery further seeks to recover 50% of the 34 efficient billable hours of attorney time and 0.2 hours of paralegal time it spent to prepare and file the Motion to Strike, which was necessitated by Plaintiff's submission of a declaration from its corporate representative after Plaintiff's refused to make a corporate witness available for deposition. While much of the Motion to Strike concerned Plaintiff's improper declaration and failure to make its witness available for deposition, Nature's Bakery only seeks 50% of its fees for preparing the motion. This is a conservative estimate of the attorney time spent preparing the portions of the motion addressing these issues. (Kwasniewski Decl. ¶ 2.) The 34 hours billed consists of:

- 29 hours billed by David Kwasniewski to research and draft the motion and reply brief; preparing supporting declarations and conferring with Nature's Bakery regarding the same;
- 3.5 hours billed by Andrew Levine to revise the draft motion and reply brief
- 1.5 hours billed by Eric Schlabs in for legal research regarding the motion to strike
- 3.0 hours billed by Justin Bustos, Nature's Bakery's local counsel, for revising and supervising the filing of Nature's Bakery's Motion for Strike

In total, Nature's Bakery incurred \$24,440.75 in fees in connection with its Motion to Strike. It also incurred \$604.51 in Westlaw fees in connection with this filing. Nature's Bakery seeks an award of 50% of these fees and costs, or \$12,220.38.

D. Fees Incurred Related to the Sur-Reply

Nature's Bakery further seeks to recover 25% of the 38.2 efficient billable hours of attorney time it spent to prepare and file the Sur-Reply, which was necessitated in part by Plaintiff's discovery misconduct. While much of the Sur-Reply concerned Plaintiff's improper reliance on its corporate representative's declaration and attorney argument which Nature's Bakery was unable to refute without the benefit of Plaintiff's deposition, Nature's Bakery only seeks 25% of its fees for preparing the Sur-Reply. This is a conservative estimate of the attorney time spent preparing the portions of the Sur-Reply addressing these issues. (Kwasniewski Decl. ¶ 9-11.) The 38.2 hours billed consists of:

- 13.2 hours billed by David Kwasniewski to research and draft the sur-reply and confer with Nature's Bakery regarding the same;
- 4.6 hours billed by Andrew Levine to revise the draft sur-reply;
- 20.4 hours billed by Eric Schlabs for legal research and drafting of the sur-reply.

In total, Nature's Bakery incurred \$22,704.75 in fees in connection with its Sur-Reply. It also incurred \$763.88 in Westlaw fees in connection with this filing. Nature's Bakery seeks an award of 25% of these fees and costs, or \$5,867.16.

E. Fees Incurred Related to this Fee Application

Nature's Bakery further seeks to recover fees for the 4 billable hours of attorney time 1 billable hour of attorney time it spent to prepare the instant fee application. This consists of

- 3 hours billed by David Kwasniewski to research and draft the application and supporting declaration;
- 1 hour billed by Andrew Levine to revise the application;
- 1.3 hours billed by Justin J. Bustos to revise and supervise the filing of the application.

- 1 hour billed by Cameron Baker, a BHB paralegal, to collect and organize supporting documents for the application.

In total, Nature's Bakery incurred \$3,571 in fees in connection with this application. Nature's Bakery reserves its right to supplement this application with the additional fees incurred in responding to any opposition to this application submitted by Plaintiff.

CONCLUSION

For the foregoing reasons, Nature's Bakery respectfully requests that the Court award Nature's Bakery all attorney's fees and costs requested in this Application in full, in the amount of **\$73,662.03**.

DATED 12th day of November 2021

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/s/ Justin J. Bustos

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CERTIFICATE OF SERVICE

I certify that I am an employee of DICKINSON WRIGHT, PLLC and that on this date, pursuant to Federal Rule of Civil Procedure 5(b), I am serving a true and correct copy of the attached **NATURE'S BAKERY'S APPLICATION FOR FEES PURSUANT TO ECF NO. 104** on the parties through the Court's CM/ECF efilng system to the following:

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DATED this 12th day of November, 2021.

/s/ Caren M. Adkins

An Employee of DICKINSON WRIGHT PLLC

EXHIBIT TABLE

Exhibit	Description	Pages¹
1	Declaration of David Kwasniewski in Support of Nature's Bakery's Application Fees Pursuant to ECF No. 104	5
	Exhibit A - Excerpts of the Invoices Submitted to Nature's Bakery	22
2	Declaration of Justin J. Bustos in Support of Nature's Bakery's Application Fees Pursuant to ECF No. 104	3
	Exhibit A – Dickinson Wright PLLC's Redacted Invoices	6

¹ Exhibit Page counts are exclusive of exhibit slip sheets.